



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-041

HKK International

*Decision made
Friday, August 26, 2022*

*Decision and reasons issued
Thursday, September 8, 2022*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.

BY

HKK INTERNATIONAL

AGAINST

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

DECISION

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint because it is premature.

Peter Burn

Peter Burn

Presiding Member

STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ (CITT Act) provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*² (Regulations), a potential supplier may file a complaint with the Canadian International Trade Tribunal concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint. Subsection 30.13(1) of the CITT Act provides that, subject to the Regulations, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the CITT Act, it shall decide whether to conduct an inquiry into the complaint.

[2] This complaint was filed by HKK International (HKK) on August 19, 2022, and concerns a request for proposal (RFP) (solicitation 21120-224987/A) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Correctional Service of Canada for the procurement of inmate safety boots. HKK alleges that PWGSC did not evaluate HKK's bid in accordance with the solicitation's published evaluation criteria, which resulted in HKK's bid being deemed non-compliant with a mandatory requirement and being declared non-responsive.

[3] The RFP was issued on March 8, 2022, with an initial bid closing date of May 3, 2022. The bid closing date was extended to May 24, 2022.

[4] HKK submitted a bid on or before the closing date.³

[5] On July 14, 2022, PWGSC advised HKK that its bid was non-responsive because it did not comply with a mandatory requirement of the solicitation concerning the submission of pre-award samples. PWGSC indicated that the pre-award sample that HKK submitted was not cut in half lengthwise to enable the evaluation process.⁴

[6] On July 14, 18, 19 and 21, 2022, HKK sent emails to PWGSC objecting to PWGSC's decision and claiming that the pre-award sample it submitted was clearly cut in half lengthwise, enough to show the composition of the outsole, midsole and insole, as required.⁵

[7] On August 8, 2022, PWGSC replied to HKK and indicated that, "although the shoe is cut, as shown in the [attached] pictures, it is not cut enough to show the composition of the midsole and the insole of the boot". PWGSC further noted that, "[m]ore importantly, it was impossible . . . to take measurements of the shoe components with the sample provided" and that, as a result, it was not possible to confirm that HKK's sample was technically compliant.⁶

[8] On August 8, 9 and 11, 2022, HKK sent further emails to PWGSC objecting to PWGSC's decision. In these emails, HKK argues that PWGSC had changed the reason given for HKK's non-compliance (from PWGSC's July 14, 2022, email) and suggests that PWGSC has applied undisclosed evaluation criteria.⁷ For example, HKK argues that nowhere in the solicitation

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ Exhibit PR-2022-041-01 at 100-117.

⁴ *Ibid.* at 141-142.

⁵ *Ibid.* at 118-130.

⁶ *Ibid.* at 148-152.

⁷ *Ibid.* at 131-139.

documents is it written that, if the pre-award sample is “not cut enough or not cut up to this mm or cm depth”, it will be declared non-compliant.⁸

[9] On August 12, 2022, HKK sent an email to PWGSC asking if PWGSC was working on “HKK Response of August 08, 2022 and appealing request of August 09, 2022 + August 11, 2022 email”.⁹

[10] There is no evidence that PWGSC has yet responded to HKK’s emails of August 8, 9, 11 and 12, 2022.

[11] Based on the above, the Tribunal finds that HKK made an objection to PWGSC for the purposes of subsection 6(2) of the Regulations.

[12] Subsection 6(2) of the Regulations provides that a potential supplier that has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal “within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”

[13] However, in the Tribunal’s view, HKK has not yet been denied relief, as dialogue between HKK and PWGSC is ongoing. Accordingly, the complaint is premature.

[14] This decision does not preclude HKK from filing a new complaint within 10 working days of receiving denial of relief from PWGSC. If PWGSC fails to respond to HKK’s concerns within 20 days of the issuance of these reasons, HKK may file a complaint with the Tribunal within 10 working days of the expiration of the time limit. Upon filing a new complaint, HKK may request that the documents already filed with the Tribunal be joined to the new complaint.

DECISION

[15] Pursuant to subsection 30.13(1) of the CITT Act, the Tribunal has decided not to conduct an inquiry into the complaint because it is premature.

Peter Burn
Peter Burn
Presiding Member

⁸ *Ibid.* at 134.

⁹ *Ibid.* at 140.